

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 89

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO WATER; PROVIDING FOR ACTIVE RESOURCE MANAGEMENT AND DESIGNATION OF CRITICAL MANAGEMENT AREAS; AMENDING AND ENACTING SECTIONS OF CHAPTER 72 NMSA 1978 TO ENABLE THE STATE ENGINEER TO REGULATE WELLS IN CRITICAL MANAGEMENT AREAS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 72, Article 2 NMSA 1978 is enacted to read:

"NEW MATERIAL DESIGNATION OF CRITICAL MANAGEMENT AREAS.--

A. The state engineer may declare a critical management area in specific areas in the same manner as special orders made pursuant to Section 72-2-8 NMSA 1978.

B. As used in Chapter 72 NMSA 1978, "critical

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1 management area" means a bounded area described by section,  
2 township and range, or by other land survey descriptions, that  
3 requires heightened water resource protection because:

4 (1) water resources may be inadequate to  
5 sustain well production as evidenced by water level decline  
6 rates and available aquifer thickness; or

7 (2) additional depletions are shown to  
8 negatively affect interstate compact delivery requirements.

9 C. All provisions of the critical management area  
10 shall apply equally throughout the entire critical management  
11 area.

12 D. A critical management area designation is  
13 subject to reconsideration upon petition by a person owning  
14 land or water rights within that critical management area. The  
15 state engineer shall consider the petition pursuant to  
16 procedures set forth for the promulgation of special orders in  
17 Section 72-2-8 NMSA 1978. The petition shall be granted if the  
18 critical management area has recovered such that the conditions  
19 under which the critical management area was declared no longer  
20 exist."

21 Section 2. Section 72-2-8 NMSA 1978 (being Laws 1967,  
22 Chapter 246, Section 1) is amended to read:

23 "72-2-8. ADMINISTRATIVE REGULATIONS, CODES, INSTRUCTIONS,  
24 ORDERS--PRESUMPTION OF CORRECTNESS.--

25 A. The state engineer may adopt regulations and

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1 codes to implement and enforce any provision of any law  
2 administered by him and may issue orders necessary to implement  
3 his decisions and to aid him in the accomplishment of his  
4 duties. In order to accomplish its purpose, this provision is  
5 to be liberally construed.

6 B. Directives issued by the state engineer shall be  
7 in form substantially as follows:

8 (1) regulations are written statements of the  
9 state engineer of general application to the public,  
10 implementing statutes, prescribing procedures and interpreting  
11 and exemplifying the statutes to which they relate;

12 (2) codes are written standards and  
13 specifications governing design and construction of dams;

14 (3) orders are written statements of the state  
15 engineer to implement his ~~[decision]~~ decisions; and

16 (4) special orders are written statements  
17 defining the declared boundaries of underground streams,  
18 channels, artesian basins, reservoirs ~~[or]~~, lakes or critical  
19 management areas.

20 C. To be effective, a regulation, code or special  
21 order issued by the state engineer shall be reviewed by the  
22 attorney general or other legal counsel of the office of the  
23 state ~~[engineer's office]~~ engineer prior to being filed as  
24 required by law and the fact of his review shall be indicated  
25 thereon.

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1           D. To be effective, a regulation or code shall  
 2 first be issued as a proposed regulation or proposed code and  
 3 filed for public inspection in the office of the state engineer  
 4 along with the findings of fact that in the opinion of the  
 5 state engineer justify the regulation or code. Distribution  
 6 shall also be made to each district and field office for public  
 7 inspection and to each of the persons on the file of interested  
 8 persons [~~hereinafter~~] mentioned in Subsection G of this  
 9 section. After the proposed regulation or code has been on  
 10 file for one month, [~~he~~] the state engineer shall publish it  
 11 or, if it is lengthy, a resume of it in not less than five  
 12 newspapers of general circulation in the state, once a week for  
 13 two consecutive weeks, with the statement that there will be a  
 14 hearing on the proposed regulation or code on a day set in the  
 15 publication, which shall be not more than thirty days nor less  
 16 than twenty days after the last publication. The hearing shall  
 17 be held in Santa Fe, and any person who is or may be affected  
 18 by the proposed regulation or code may appear and testify.

19           E. Special orders may be promulgated without prior  
 20 notice and hearing, but the state engineer shall, within ten  
 21 days of promulgation of a special order, set a date for a  
 22 hearing on the special order and publish notice of the public  
 23 hearing in the same manner required [~~above~~] in Subsection D of  
 24 this section. When a special order is issued to designate a  
 25 critical management area, the order shall not become effective

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1 until after notice and hearing. All applications submitted  
2 after issuance of the special order shall be subject to the  
3 provisions of the final adopted special order. Hearings on  
4 special orders to create a critical management area shall be  
5 held within the proposed critical management area.

6 F. In addition to filing copies of regulations as  
7 required by law, the state engineer shall maintain in his  
8 office duplicate official sets of current regulations, codes  
9 and special orders, which sets shall be available for  
10 inspection by the public.

11 G. The state engineer shall develop and maintain a  
12 file of names and addresses of individuals and professional,  
13 agricultural and other groups having an interest in the  
14 promulgation of new, revised or proposed regulations and shall  
15 at convenient times distribute to these persons all such  
16 regulations, making such charges [~~therefor~~] as will defray the  
17 expense incurred in their physical preparation and mailing.

18 H. Any regulation, code or order issued by the  
19 state engineer is presumed to be in proper implementation of  
20 the provisions of the water laws administered by him.

21 I. The state engineer shall state the extent to  
22 which regulations, codes and orders will have retroactive  
23 effect and, if no such statement is made, they will be applied  
24 prospectively only."

25 Section 3. Section 72-12-1.1 NMSA 1978 (being Laws 2003,  
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1 Chapter 298, Section 2) is amended to read:

2 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

3 A. A person, firm or corporation desiring to use  
4 public underground waters described in this section for  
5 irrigation of not to exceed one acre of noncommercial trees,  
6 lawn or garden or for household or other domestic use shall  
7 make application to the state engineer for a well on a form to  
8 be prescribed by the state engineer. Upon the filing of each  
9 application describing the use applied for, the state engineer  
10 shall issue a permit to the applicant to use the underground  
11 waters applied for [~~provided that~~], except as otherwise  
12 provided in this section.

13 B. Permits for domestic water use within  
14 municipalities shall be conditioned to require the permittee to  
15 comply with all applicable municipal ordinances enacted  
16 pursuant to Chapter 3, Article 53 NMSA 1978.

17 C. The state engineer may deny a domestic well  
18 permit in a critical management area unless the applicant  
19 obtains a water right pursuant to Subsection D of this section.  
20 Water rights obtained pursuant to this section are water rights  
21 with a priority date and may be transferred to a new location  
22 or purpose of use subject to the provisions of Chapter 72 NMSA  
23 1978.

24 D. A person required to obtain a water right  
25 pursuant to this section shall obtain an existing water right

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1 from within that critical management area and change the place  
 2 or purpose of use of the water right; provided that the  
 3 proposed change will not increase depletions within the  
 4 critical management area. The change in place or purpose of  
 5 use shall be made pursuant to the provisions of Section 72-5-24  
 6 or 72-12-7 NMSA 1978, except that a person required to obtain a  
 7 water right pursuant to this section may be exempted from the  
 8 public notice requirements if:

9 (1) there is a change of use to domestic use  
 10 with no change in location of use; or

11 (2) the water right transferred is one acre-  
 12 foot or less and:

13 (a) the state engineer determines that  
 14 the change will not impair existing water rights, be contrary  
 15 to conservation of water or be detrimental to the public  
 16 welfare; and

17 (b) the water right to be transferred is  
 18 not from an acequia or community ditch.

19 E. A person may appeal the decision of the state  
 20 engineer pursuant to the provisions of Section 72-7-1 NMSA  
 21 1978."

22 Section 4. EMERGENCY.--It is necessary for the public  
 23 peace, health and safety that this act take effect immediately.

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